

SENATE No. 364

The Commonwealth of Massachusetts

PRESENTED BY:

James T. Welch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act strengthening the Massachusetts home care program.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
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| <i>James T. Welch</i> | <i>Hampden</i> | |
| <i>Paul J. Donato</i> | <i>35th Middlesex</i> | <i>1/25/2017</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | <i>1/30/2017</i> |
| <i>Jack Lewis</i> | <i>7th Middlesex</i> | <i>1/30/2017</i> |
| <i>Michael D. Brady</i> | <i>Second Plymouth and Bristol</i> | <i>1/30/2017</i> |
| <i>John J. Lawn, Jr.</i> | <i>10th Middlesex</i> | <i>1/30/2017</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> | <i>1/30/2017</i> |
| <i>Daniel J. Ryan</i> | <i>2nd Suffolk</i> | <i>1/30/2017</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | <i>1/30/2017</i> |
| <i>Thomas M. McGee</i> | <i>Third Essex</i> | <i>1/30/2017</i> |
| <i>Paul R. Heroux</i> | <i>2nd Bristol</i> | <i>2/1/2017</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>2/1/2017</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> | <i>2/2/2017</i> |
| <i>Frank A. Moran</i> | <i>17th Essex</i> | <i>2/2/2017</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>2/2/2017</i> |
| <i>Michael F. Rush</i> | <i>Norfolk and Suffolk</i> | <i>2/3/2017</i> |
| <i>Jose F. Tosado</i> | <i>9th Hampden</i> | <i>2/3/2017</i> |
| <i>Angelo J. Puppolo, Jr.</i> | <i>12th Hampden</i> | <i>2/3/2017</i> |

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| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>2/3/2017</i> |
| <i>Linda Dorcena Forry</i> | <i>First Suffolk</i> | <i>2/3/2017</i> |

SENATE No. 364

By Mr. Welch, a petition (accompanied by bill, Senate, No. 364) of James T. Welch, Paul J. Donato, Jason M. Lewis, Jack Lewis and other members of the General Court for legislation to strengthen the Massachusetts home care program. Elder Affairs.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 370 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act strengthening the Massachusetts home care program.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The Executive Office of Elder Affairs, under authority granted in Section 4
2 of MGL Chapter 19A, shall amend the Massachusetts Home Care regulations (651 CMR 3.00).
3 Such amendment shall require that home care aide agencies contracting with Aging Service
4 Access Points to provide homemaker and personal care services through the Massachusetts
5 Home Care program submit comprehensive annual cost reports. Such annual cost reports shall
6 be created by the Executive Office of Elder Affairs and that include a full accounting of annual
7 costs for supplies, labor, administrative, and other categories as deemed appropriate; and

8 SECTION 2. The Office of the Attorney General, under authority granted under in
9 Section 11N of Chapter 12 of the General Laws to monitor trends in the health care market, may
10 investigate any home care aide agency contracting with Aging Service Access Points to provide

11 homemaker and personal care services through the Massachusetts Home Care program. Further,
12 the attorney general may require that any such agency produce documents, answer
13 interrogatories and provide testimony under oath. Nothing in this section shall limit the authority
14 of the attorney general to regulate home care providers or protect home care consumers under
15 any other law.

16 SECTION 3. Chapter 111 of the General Laws is hereby amended by inserting after
17 Section 57D, the following new section:

18 Section 57E

19 (A) The department shall, after a public hearing, promulgate rules and regulations for the
20 licensing and conduct of home care aid agencies. A home care aide agency means any business,
21 non-profit or other entity seeking to contract to provide homemaker, personal care homemaker,
22 or home health services in the Commonwealth, whether or not such entity is currently providing
23 such services. Each such home care aid agency shall be required to obtain a service license
24 under a new process to be newly established by the Massachusetts Department of Public Health,
25 in consultation with the Executive Office of Elder Affairs.

26 (B) Such license process shall require that, in a license and authority to provide such
27 services, an application must be filed with the Department of Public Health in which the
28 applicant shall specify the types of home care or home health services to be offered by the
29 provider as well as the following:

30 1) expected service area, including municipality and county names; and

31 2) an ongoing quality assurance program that includes compliance with all applicable
32 federal and state quality of care standards; and

33 3) written assurance that it will fully comply with all cost reporting and minimum
34 average employee compensation standards established by state law; and

35 4) other requirements as determined by the department.

36 (C) An appropriate fee structure as necessary to administer this licensure program shall
37 be determined by the department.

38 SECTION 4. Subsection 72J of chapter 111 of the General Laws is hereby amended by
39 inserting the following new subsection (b):

40 (b) As used in this subsection, the following terms shall have the following meanings:

41 "Home Care Worker" means any person employed by a home care aide agency to
42 provide home health, homemaker, personal care, companion and chore services.

43 "Home Care Aide Agency" means an entity providing designated and approved
44 home care program services under contract with an Aging Services Access Point as defined in
45 M.G.L. c. 19A 4B.

46 "Home Care Worker Registry" means the registry established under this
47 subsection.

48 The department, subject to appropriation and in consultation with the Executive Office of
49 Elder Affairs, shall establish a new home care worker registry of all individuals currently
50 employed by a home care aide agency. A home care aide agency shall only hire or employ on a

51 paid, unpaid, temporary or permanent basis, a home care worker who is listed in said registry as
52 having completed all required certifications and trainings.

53 The registry shall also contain specific documented findings, in accordance with this
54 subsection, by any Executive Office of Health and Human Services department of patient or
55 resident abuse, mistreatment, neglect or misappropriation of patient or resident property
56 involving an individual listed on the registry. All home care aide agencies shall contact the
57 registry prior to hiring an employee to ascertain if there is a finding of patient or resident abuse,
58 mistreatment, neglect or misappropriation of patient or resident property. In the case of inquiries
59 to the registry, any information disclosed concerning a finding of patient or resident abuse,
60 mistreatment, neglect or misappropriation of patient or resident property shall also include a
61 disclosure of any statement in the registry relating to the finding or a clear and accurate summary
62 of any such statement. No home care aide agency shall hire an individual whose name appears
63 in the registry with an adjudicated finding of patient or resident abuse, mistreatment, neglect or
64 misappropriation of patient or resident property if that individual is under a suspension imposed
65 by the department under the terms of this section.

66 The department shall make a finding as to the accuracy of allegations of patient or
67 resident abuse, mistreatment, neglect or misappropriation of patient or resident property after
68 providing notice to the home care worker of the allegation and a reasonable opportunity for a
69 hearing for the individual to rebut such allegations. If the department finds that a home care
70 worker abused, mistreated or neglected a patient or resident or misappropriated patient or
71 resident property, the department shall notify the home care worker and the home care aide
72 agency of that finding. The department shall not make a finding that an individual has neglected
73 a patient or resident if the individual demonstrates that such neglect was caused by factors

74 beyond the control of the individual. Upon making a finding of patient or resident abuse,
75 mistreatment, neglect or misappropriation of patient or resident property, the department may
76 suspend the right of such individual to work as a home care worker. The department shall
77 include the terms of any such suspension in the registry and no home care aide agency shall hire
78 that individual until the suspension has been served to its completion.

79 If the individual is charged with and convicted of a crime arising out of a report of abuse,
80 the department shall permanently suspend the individual's ability to work as a home care worker;
81 provided, however, that if an individual's finding of guilt is overturned on appeal, the individual
82 may appeal to the department to overturn the suspension. If a case is continued without a
83 finding, the department may permanently suspend an individual's ability to work as a home care
84 worker and shall make such a finding on the record to that effect after notice to that individual
85 and an opportunity to appeal; provided, however, that a case continued without a finding shall
86 appear in the registry as part of the registrant's record for not less than the length of probation or
87 sanction imposed on the individual by the court.

88 A home care worker who is subject to a temporary or permanent suspension shall not
89 offer services, whether publicly or privately funded, as a caregiver or in another direct service
90 capacity to persons with a physical, intellectual or developmental disability, a mental illness or to
91 children or elderly persons. An individual in violation of this paragraph shall be subject to a fine
92 of not more than \$5,000."

93 The home care worker registry shall include, but not be limited to, the following
94 information concerning each home care worker: (1) Full legal name; (2) Current home address;

95 (3) Gender; (4) Date of birth; (5) Employers full legal name; (6) Job Title and (7) An updated list
96 of home care trainings and/or certifications completed by the home care worker.

97 The department shall require the registry information for each employed home
98 care worker to be submitted and regularly updated by each home care aide agency subject to the
99 provisions of this subsection. A home care aide agency shall collect and maintain the required
100 information for each employed home care worker and shall promptly submit updated information
101 whenever such information changes. No charges shall be imposed on any person or entity for
102 any costs related to the registry.

103 Persons employed as a home care worker by a home care aide agency on the
104 effective date of this section shall be registered as soon as practicable, but not later than six
105 months after the effective date of this statute. The registry shall be updated at least quarterly.

106 The registry shall be sufficiently and promptly accessible to meet the needs of the
107 public. Upon request, information in the home care worker registry shall be made available to the
108 public, including but not limited to home care workers and home care aide agencies. The
109 department shall include security mechanisms in the registry to implement and maintain a record
110 of accessing or obtaining information from the registry.

111 The department shall make any such additional rules and regulations as are reasonably
112 necessary to implement the provisions of this subsection.